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In The

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1955

No. [redacted] 16

ALFRED E. BUTLER,
Appellant,

vs.

STATE OF MICHIGAN
Appellee.

MEMORANDUM FOR METROPOLITAN DETROIT BRANCH, AMERICAN CIVIL LIBERTIES UNION, *AMICUS CURIAE*

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MOSES, INC., 908 FORT ST., DETROIT, MICH.

In The

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1955

No. 548

ALFRED E. BUTLER,
Appellant,

vs.

STATE OF MICHIGAN
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MEMORANDUM FOR METROPOLITAN DETROIT BRANCH, AMERICAN CIVIL LIBERTIES UNION, *AMICUS CURIAE*

The Metropolitan Detroit Branch of the American Civil Liberties Union is a voluntary association of residents of Detroit, Michigan, and the adjoining metropolitan area who are interested in the protection and furtherance of constitutional liberties. Its members include adult readers of pocket books, parents of child readers and students under the age of twenty-one years. All of these persons are affected by the issues presented in this cause.

The following memorandum in behalf of the local branch is submitted with the written consent of counsel for both parties.

STATEMENT

Defendant Alfred E. Butler on June 16, 1954 in the City of Detroit sold a pocket sized copy of a novel, "The Devil Rides Outside," by John H. Griffin, to Herbert W. Case, the then inspector in charge of the License and Censor Bureau of the Detroit Police Department (18-19). This was a fifty-cent edition of a book which as a hard-cover volume was available at the Detroit Public Library (24).

The book was described as "a serious work of literature" by Professor Sculley Bradley of the University of Pennsylvania (59, 72) and as a "novel of great literary merit" by Associate Professor Frank L. Huntley of the University of Michigan (106). Professor Charles Carroll Hollis, of the University of Detroit, who testified for the People, described it as "a well intentioned book that is not completely successful" (213); he compared it in this regard to "Moll Flanders" of Daniel Defoe which he regarded as an unsuccessful work (221). The trial court found that there was little question of the author's sincerity of purpose in writing the book which sought to portray the conflict in the protagonist between "desires for sexual and sensual pleasures, and the longing for a spiritual life and control over his desires" (231-232). However, the court concluded (232) that the book contained "lewd, immoral, obscene and lascivious language or description" and offended the provisions of C. L. 1948,

§750.343, Mich. Stats. Ann., §28.575 which read (237-238):

> "Any person who shall import, print, publish, sell, possess with intent to sell, design, prepare, loan, give zine, newspaper, writing, pamphlet, ballad, printed paper, print, picture drawing, photograph publication or other thing, including any recordings, containing obscene, immoral, lewd or lascivious prints, pictures, figures, or descriptions, tending to incite minors to violent or depraved or immoral acts, manifestly tending to the corruption of the morals of youth, or shall introduce into any family, school or place of education or shall buy, procure, receive, or have in his possession, any such book, pamphlet, magazine, newspaper, writing, ballad, printed paper, print, picture, drawing, photograph, publication or other thing, either for the purpose of sale, exhibition, loan or circulation, or with intent to introduce the same into any family, school or place of education, shall be guilty of a misdemeanor."

The Court concluded that "even viewing the book as a whole," the offensive language was "not necessary to the proper development of the theme of the book nor of the conflict expressed therein" (232). The court found that the statute was validly enacted and was not inconsistent with federal and state constitutional guarantees (231). The defendant was found guilty and a fine imposed. The State Supreme Court declined review and probable jurisdiction was noted by this Court.

Inspector Case, the purchaser of the book, testified that he was attached to the License and Censor Bureau of the Detroit Police Department since 1937, and for some five years was in charge of its work (17). In such capacity he appeared and testified in December, 1952, before the so-called Gathings Committee and explained in detail the

operation of the Bureau[1]. He pointed out that the above-quoted statute was one of the principal vehicles through which his office prohibited the circulation of literary material which it deemed offensive.[2] He explained that the Bureau had been organized because news stands "were completely saturated with questionable materials, sexed up covers and so on, and the great number of complaints we received necessitated the organization of such specific bureau."[3] In 1950 or 1951 because of the "great amount of complaints" which "started coming in to us on the pocket-size books * * * it was necessary that we start screening these * * *."[4]

When an offensive book is found the Bureau does not proceed to prosecute sellers for violation of the statute; litigating the matter in court, Inspector Case explained, "lets a lot of people know about it. They get the front page publicity which they couldn't buy."[5] Rather, the two principal distributors of pocket books in Detroit were advised that certain volumes were deemed improper. When one of these distributors indicated some reluctance, Inspector Case testified that "we called them in, and we threatened prosecution * * *. We had them in a conference with the Wayne County Prosecuting attorney's office, and there they voluntarily agreed to submit to us for inspection the pocket-size magazines before distribution."[6]

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[1]Hearings before the Select Committee on Current Pornographic Materials, H. R. 82nd Cong., 2nd Sess., Dec. 1952, 112-143 (1953), hereafter cited as "Hearings."

[2]Hearings, 113.

[3]Hearings, 114.

[4]Hearings, 115-116.

[5]Hearings, 112.

[6]Hearings, 116. See also Hartmann, "Pocket Size Books Give Police Censors Biggest Headache," The Detroit News, p. 12, col. 2 (Dec. 28, 1952); Tendler, "City Censor's Influence Felt Over All U. S.," The Detroit News, part 1, p. 21, col. 1 (April 25, 1954).

The Bureau obtains volumes prior to their circulation in Detroit and determines whether or not their sale will be permitted. One publisher mentioned by Inspector Case submits new titles in manuscript form so that "deletions can be made before going to print."[7] This system of censorship is more effective, Inspector Case testified, for "if we can keep that thing (offensive material) out of circulation, and it doesn't hit the streets, why, we are accomplishing a lot more than attempting to do something about it after it has gained its objective of being circulated."[8]

The Detroit Police Department has jurisdiction, of course, only within the City of Detroit itself; this limitation was overcome by the License and Censor Bureau early in its history through arrangements with the Prosecuting Attorney for Wayne County so that the influence of the Bureau became county-wide.[9] Mr. Case also recognized that "we are in a position of 'big brother' to smaller communities."[10] In 1952 the Bureau was distributing its list of proscribed books to some seventeen or eighteen other Michigan communities[11] as well as to communities outside of the state. The Bureau makes its lists available to law enforcement agencies throughout the country upon request.[12] Inspector Case stated he had answered in excess of 10,000 letters from around the country on comic books alone.[13] As a result, Inspector Case conceded that the De-

[7]Hearings, 128.

[8]Hearings, 122. Every book banned by the Bureau has been withdrawn from circulation. Hearings, 116.

[9]Hearings, 116. See also Lockhart & McClure, "Literature, the Law of Obscenity and the Constitution," 38 Minn. L. Rev. 295, 314-315 (1954).

[10]Hearings, 134.

[11]Hearings, 131.

[12]Hearings, 134.

[13]Hearings, 132.

troit system of censorship "probably" affects the entire national circulation of pocket books.[14] This appears to be an understatement.[15]

At the time of his Congressional testimony Inspector Case stated that the Bureau operated with only twelve employees handling its censorship functions[16] and it was necessary for the police officers on the staff to spend many hours on their own time reading obscene materials.[17] "It became necessary," Inspector Case stated, "that we undertake a terrific job to screen those things with a very small staff of men. Now, it is far from being fool-proof. We do screen them through what we call skimming off the filth, so to speak * * *."[18] Though the staff has not increased significantly, the activities of the Bureau have steadily grown. In 1950 it reviewed some 167 books of which 30 were withheld; it estimated that the books withheld represented some 295,000 copies.[19] In the following year, 1951, of some 726 books reviewed, 39 were excluded, representing some 400,000 copies.[20] For 1954 the Bureau reported that it reviewed 1,047 books and excluded 53 representing an estimated 480,000 copies.[21] At the time

[14]Hearings, 130.

[15]Sonderegger, "What Detroit Censors May Affect All U. S.," Minneapolis Star, p. 46, col. 1 (Feb. 11, 1953); Lardner, "Let 'Em Eat Newspapers," Newsweek 92 (March 14, 1955); Tendler, "City Censor's Influence Felt All Over U. S.," The Detroit News, pt. 1, p. 21, col. 1 (April 25, 1954); Lockhart & McClure, "Literature, the Law of Obscenity and the Constitution," 38 Minn. L. Rev. 295, 316 (1954). The experience of Youngstown, Ohio with the Detroit list is illustrated in *New American Library of World Literature* v. *Allen*, 114 F. Supp. 823 (N. D. Ohio, 1953). See also 1 Censorship Bulletin of American Book Publishers Council No. 2, p. 4 (March, 1956); Blanshard, The Right to Read 184-185 (1955); St. John Stevas, Obscenity and the Law 171-173 (1956).

[16]Hearings, 113.

[17]Hearings, 135.

[18]Hearings, 116.

[19]Hearings, 136.

[20]Hearings, 137.

[21]89th Annual Report of Detroit Police Department 107 (1954).

this case arose it was announced that the Bureau had reviewed more than 3,000 books, of which 192 had been ruled "objectionable" and 46 "partially objectionable."[22]

It is not clear whether the Bureau pursues its reviewing function with respect to hard cover or bound volumes. It has been variously stated in the public press that it does not inspect such volumes[23] and that such books are reviewed when a "complaint" is received.[24] The standards by which pocket books are judged by the Bureau are not too clear; in his testimony Inspector Case suggested that "excessive profanity" or "lewd and lascivious" language or detailed descriptions of erotic experience as well as the "general continuity and tenor" of a story may all, presumably, be grounds for considering a book objectionable.[25] Mr. Case stressed that pocket editions of standard works may be published with "sexed up covers" which, apparently, may make the books objectionable for this reason alone.[26] Since the books are not obtainable in Detroit, it is not possible for this *amicus curiae* to determine how these standards are interpreted and applied by the Bureau, although it would seem, as indicated hereinafter, that any reference to sex, whether by physician, psychoanalyst or novelist, risks classification as obscene by the Bureau. The member of the Wayne County Prosecuting Attorney's office who has long worked intimately with the

[22]"Police Book Ban Faces Court Test," Detroit Free Press, p. 6, col. 4 (June 16, 1954). More recently the figure has been put at 400 volumes representing a circulation of 4,000,000 copies. "Screen Mail for Filth, Censor Advises Parents," The Detroit News, p. 37, col. 3 (Oct. 19, 1955).

[23]"Police Book Ban Faces Court Test," Detroit Free Press, p. 6, col. 4 (June 16, 1954).

[24]Hartmann, "Pocket Size Books Give Police Censors Biggest Headache," The Detroit News, p. 12, col. 2 (Dec. 29, 1952).

[25]Hearings, 120-121. The Detroit Council of Churches recently noted that a volume on sex education, which it recommended, had been proscribed. Portions had been found "too stimulating". "Sex Education Book Ban Spurs Restudy of 'Slichs'," The Detroit News, p. 18, col. 1 (Sept. 18, 1956).

Bureau, has indicated the standard applied by him: "We're policemen, not censors * * *. If I feel that I wouldn't want my 13 year old daughter reading it, I decide it's illegal. Mind you, I don't say it is illegal in fact, I merely say that in my opinion it would be a violation of law to distribute it. The distributors usually cooperate by withholding the book."[27]

Mr. Case is no longer in charge of the Bureau but his "philosophy" is said to have continued without interruption.[28] Melville E. Bullock, the present head of the Bureau, has perpetuated the censorship procedure for pocket books. "If we find a book we consider unfit," he stated soon after he took office, "we ask the distributor to withdraw it from the dealers. Generally there is compliance. We have not had much trouble here."[29] Detroit has approximately 2,500 retail outlets for pocket books.[30] At the time of Inspector Case's Congressional testimony there had never been a prosecution involving distribution of any pocket book[31] and the present case is the only instance of such a prosecution since.[32] Detroit continues to be known as the nation's "capitol of police censorship of paperbooks."[33]

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[26]Hearings, 133.

[27]Tendler, "Detroit Book Censorship a Model for Other Cities," The Detroit News, p. 16, col. 1 (May 5, 1955); Publishers Weekly 218 (Jan. 21, 1956). See also Tyler, "Censor Cites Need for Crackdown by U. S.," Detroit Free Press, p. 18, col. 4 (March 16, 1953).

[28]Tendler, "Detroit Book Censorship a Model for Other Cities," The Detroit News, p. 16, col. 1 (May 5, 1955).

[29]"Screen Mail for Filth, Censor Advises Parents," The Detroit News, p. 37, col. 3 (Oct. 19, 1955). Mr. Bullock recently pledged extension of these operations. "Ban on 'Girlie' Mags Sought," Detroit Free Press, p. 20, col. 1 (Sept. 20, 1956).

[30]Hearings, 122; Hartmann, "Pocket Size Books Give Police Censors Biggest Headache," The Detroit News, p. 12, col. 2 (Dec. 29, 1952).

[31]Hearings, 117.

[32]"Screen Mail for Filth, Censor Advises Parents," The Detroit News, p. 37, col. 3 (Oct. 19, 1955).

[33]Publishers Weekly 218 (Jan. 21, 1956)

The public which spends thousands of dollars annually to finance the work of the Bureau,[34] is not advised of the pocket books the Bureau keeps from the reading audience of Detroit. No list of titles is contained in the annual reports of the Bureau. Efforts to determine the facts are strenuously discouraged. Inquiry by a member of the State Bar of Michigan in behalf of a prospective book seller met with the reply "Our list of books which have been found to be in violation of the State Statutes is not available to the public but is strictly police information."[35] Presumably, sellers of pocket books are not normally furnished lists of volumes deemed objectionable by the Bureau; circulation of this information is confined to the large distributors and to those dealers who make substantial purchases from non-local sources.

Despite the Bureau's policy, after considerable effort by this *amicus curiae,* inspection was made of the lists of books which the Bureau deems offensive. The lists are in mimeographed form and appear to be supplemented each month. They are entitled "Detroit Police Department, License and Censor Bureau" and bear the legend:

> "The following listed titles of pocket size books are those which have been found to be in violation of the Michigan State Statutes by the Wayne County Prosecuting Attorney's office."

There follows a list of titles, author, publisher and the "date withheld" by the Bureau. There are hundreds of volumes on such lists including materials no doubt similar to those considered in *Hannegan v. Esquire, Inc.,* 327 U. S. 146. There are also works of more serious intention and significance. The following volumes are taken from such mimeographed lists:

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[34]Hearings, 125.
[35]Letter from Inspector Melville E. Bullock, May 17, 1956.

Book Title	Author	Publisher	Date Withheld
Carlotta	Robert Briffault	Avon Pub. Co.	10-28-50
Geraldine Bradshaw	Calder Willingham	Avon Pub. Co.	10-10-51
Wintertime	Jan Valtin	Rinehart Books	10-17-51
Sexual Feeling in Married Men and Women	G. Lombard Kelly, M.D.	Pocket Books, Inc.	10-24-51
Wine of Violence	Ralph Ingersoll	Popular Libr. Co.	3-4-52
A World I Never Made	James T. Farrell	New Amer. Libr.	3-14-52
Story of My Psychoanalysis	John Knight	Pocket Books, Inc.	5-19-52
End as a Man	Calder Willingham	Avon Pub. Co.	6-13-52
Sex Life of the Single, The Married & the Engaged	Maurice Chedeckel, M.D.	Eugenics Pub. Inc.	7-11-52
Gas House McGinty	James T. Farrell	Avon Pub. Co.	9-5-52
The Farmer's Hotel	John O'Hara	Bantam Books, Inc.	12-3-52
Don't Touch Me	McKinlay Kantor	Bantam Books, Inc.	12-30-52
Across the River and Into the Trees	Ernest Hemingway	Dell Pub. Co.	1-26-53
Lord God of the Flesh	Jules Romains	Pocket Books, Inc.	2-13-53
The Bastard	Erskine Caldwell	Novel Selections	2-16-53
Revolt of Mamie Stover	Wm. Bradford Huie	New Amer. Libr.	2-16-53
Catcher in the Rye	J. D. Salinger	New Amer. Libr.	3-16-53

Book Title	Author	Publisher	Date Withheld
Back of Town	Maritta Wolff	New Amer. Libr.	4-7-53
Barbary Shore	Norman Mailer	New Amer. Libr.	5-15-53
An American Dream	James T. Farrell	New Amer. Libr.	7-22-53
From Here to Eternity	James Jones	Fawcett Pub., Inc.	7-14-53
Intimacy	Jean Paul Sartre	Avon Pub. Co.	11-6-53
Father and Son	James T. Farrell	New Amer. Libr.	12-16-53
Sexual Practices of American Women	Christopher Gerould	Lion Book	2-9-54
Sex After 40	S. A. Lenin, M.D. John Gilmore, Ph.D.	Dell Pub. Co.	2-19-54
The Devil Rides Outside	John H. Griffin	Pocket Books, Inc.	2-26-54
1919	John Dos Passos	Pocket Books, Inc.	4-6-54
Naked to My Past	Frederic Wakeman	Pop. Libr. Inc.	11-3-54
Psychology of Sex	Havelock Ellis	New Amer. Libr.	11-18-54
Magnificent Bastard	Lucy Herndon Crockett	Dell Pub. Co.	1-4-55
Mud on the Stars	William Bradford Huie	New Amer. Libr.	1-7-55
Blackboard Jungle	Eva Hunter	Pocket Books, Inc.	3-21-55
History of Prostitution	George Ryley Scott	Medical Press of N.Y.	5-31-55

Book Title	Author	Publisher	Date Withheld
Sexual Conduct of the Teen Ager	Jules Archer and Dr. S. V. Lawton	Berkeley Pub. Co.	6-8-55
This Thing Called Love	Edited by Marc Slonim and Harvey Breit	New Amer. Libr.	9-14-55
Death on the Instalment Plan	Louis Ferdinand Celine	Avon Pub. Co.	10-18-55
Nights of Love and Laughter	Henry Miller	New Amer. Libr.	11-16-55
The World in the Evening	Christopher Isherwood	Pop. Libr. Inc.	11-16-55
An Act of Love	Ira Wolfert	Pocket Books, Inc.	11-21-55
Somebody up there Likes Me	Rocky Graziano	Pocket Books, Inc.	3-14-56
Aboard the Flying Swan	Stanley Wolpert	Pocket Books, Inc.	4-17-56
Facts of Life and Love for Teen Agers	Evelyn Millis Duvall	Pop. Libr. Inc.	3-22-56
Blaze of Noon	Rayner Heppenstall	Berldey Pub. Co.	5-4-56
The Wine of Youth	Robert Wilder	Bantam Books, Inc.	5-17-56
The Girl in Dogwood Cabin	Calder Willingham	New Amer. Libr.	6-15-56
A Devil in Paradise	Henry Miller	New Amer. Libr.	7-13-56
Intimacy	Jean Paul Sartre	Berkeley Pub. Corp.	8-17-56
Waterfront	Budd Schulberg	Bantam Books, Inc.	8-22-56

ARGUMENT

I. The Statute on Its Face Does Not Meet Due Process Requirements.

The Michigan statute is so drawn that it prohibits distribution of "any book * * * containing obscene, immoral, lewd or lascivious descriptions, tending to incite minors to violent or depraved or immoral acts, manifestly tending to the corruption of the morals of youth * * *." Such words as "obscene, immoral, lewd or lascivious," are rooted in cultural patterns which are themselves difficult to determine and more difficult to regard as stable.[36] Whether such words, standing alone, have such definiteness of connotation as to meet the standards demanded of a criminal statute by the Fourteenth Amendment is seriously to be doubted. But the words do not stand alone in the Michigan statute prohibiting material which must not only be "obscene, immoral, lewd or lascivious," but must meet additional requirements. These requirements are set forth as parallel criteria: (1) a tendency to incite minors to violent or depraved or immoral acts, and/or (2) a tendency to corrupt the morals of youth. It is not clear whether these two criteria are to be read alternatively and independently or cumulatively. They are obviously different. One applies to "minors," which presumably means any one under twenty-one years of age. The other applies to "youth," an infinitely hazier category which could be

[36]See LaBarre, "Obscenity: An Anthropological Appraisal," 20 Law & Contemp. Prob. 533 (1955); Kaplan, "Obscenity as an Esthetic Category," 20 Law & Contemp. Prob. 544 (1955); Lockhart and McClure, "Literature, the Law of Obscenity and the Constitution," 38 Minn. L. Rev. 295, 374 (1954).

broader or narrower than "minors." The first criterion contemplates material tending to incite violence, depravity or immorality; the second refers to that which "manifestly" tends to the corruption of youthful morals. The statute requires that some distinction be made between mere tendencies and manifest tendencies, however difficult it may be to determine the difference.

What varieties of "violent or depraved or immoral acts" are contemplated is no less clear. "Violence" can refer to the customary acts of mayhem by a ten-year-old toward his five-year-old sister; the phrase is not confined to criminal violence. Nor is it clear that immorality and the corruption of morals are limited to matters of sex; if they extend to any violation of what may be deemed the moral law in a particular community, the difficulties are compounded.[37] Whether both these indefinite criteria must be read to qualify the general classification of "obscene, lewd or lascivious descriptions" or whether it is enough if either is met cannot confidently be ascertained from a reading of the statute. The statute itself contains a treacherous fundamental ambiguity which makes it impossible fairly to determine the measure of its exaction. This would seem a fatal defect. *Connally v. General Construction Co.*, 269 U. S. 385, 391; *Joseph Burstyn Inc. v. Wilson*, 343 U. S. 495, 503-504; *Superior Films v. Department of Education*, 346 U. S. 587.

The peculiar language of the Michigan statute engenders another basic difficulty. Whether the reading of offensive literature actually causes crime, or violent or depraved conduct is far from clear. See *Winters v. New York*,

[37]It need hardly be noted, for example, that vagrancy and truancy are made attractive by Tom Sawyer and Huckleberry Finn despite local policy to the contrary. Municipal Code of Detroit, Ch. 223, Sec. 4 (1954); C. L. 1948, §367.1.

333 U. S. 507, 527. If the legislature had merely outlawed all material of a well-defined class in the belief that it was thereby reducing the causes of anti-social conduct, there might be little occasion to review its motives or the soundness of its medical, penological or psychological views. But the Michigan Legislature has not here categorically and unqualifiedly prohibited all "obscene, immoral, lewd or lascivious" materials; the statute is not the fruit of a legislative finding or opinion on the supposed connection between salacious literature and substantive social evils. Rather, the statute transfers to the court the need for a determination that the objectionable material tends to incite violence or depravity or immorality or manifestly tends to corrupt youthful morals. In the present state of our scientific knowledge it is doubtful that such a judicial finding could ever be soundly reached and defended. Here, there was no evidence whatever that any minor or member of "youth" had actually read the pocket edition of "The Devil Rides Outside" in the City of Detroit or elsewhere or that such reading produced any of the deleterious consequences predicted. Nor was there testimony by witnesses expert in psychology, medicine or kindred fields which established as a matter of scientific fact or even of probability that the substantive evils feared would result from the reading of such novel. The conclusions to this effect by the trial judge (231) were necessarily gratuitous; by reason of the language of this statute deficiencies in the proofs could hardly be supplied by presumptions of law, technical notions of the burden of proof or presumptions concerning the well-springs of juvenile conduct. Conviction for a crime, one of whose ingredients is never established would seem constitutionally indefensible.

II. The Statute Is Discriminatory and Unequal in Its Application.

The freedom of expression through published pocket books is peculiarly fulfilled when such books are available on dealers' shelves to attract the attention of the casual browser. Undeniably, many books are bought and read, not because they are indexed in a public library catalogue or advertised in the literary magazines but because they are displayed, seen and handled by their prospective audience. With the increase in costs, many readers have been priced out of the market for hard cover volumes costing three dollars or more. The dramatically lower price of the paperbook volume has certainly contributed heavily to its appeal and popularity.

The reader who could afford to purchase "The Devil Rides Outside" in a hard cover edition such as in the Detroit Public Library may read it, apparently, undisturbed by any of the provisions of C. L. 1948, §750.343, Mich. States. Ann., §28.575. This is true whether such reader is a "youth" or a "minor" or an octogenarian. He is free to look at the bound volume displayed at a book store in Detroit, to glance through it and determine if it appeals sufficiently to justify the purchase. If, upon taking it home, his morals are corrupted, it is a consequence ignored by the License and Censor Bureau, at least in the absence of a "complaint." The statute, as systematically applied and enforced, is thus directed against the reader, not of different literary appetites or moral susceptibilities, but of scantier purse. This is an impermissible basis for enforcement. *Griffin v. Illinois*, 351 U. S. 12.

It may be true that here are persons who would notice pocket books displayed in a soda bar or a drug store and

who would not normally haunt establishments where bound volumes are sold. Among such persons may well be minors and youth sufficiently mature to serve in the armed forces, to attend colleges and universities and also to be interested in matters regarded by the Detroit Police Department as "objectionable." It may even be assumed that the legislature might regard children of tender years deserving of special protection from the reading material which is thus circulated to interest or titillate their elders. But the statute in question does not distinguish between sales in bookstores and drugstores in the City of Detroit. It does not define obscenity in terms of the hardness of a volume's cover. The statute as it is drawn and as it is applied cannot be used exclusively for the "protection of children" without interfering inescapably with the rights of expression and information of others who are not children. We do not believe that the freedom of press and the freedom to read which are constitutionally guaranteed permit incursions or interferences so grossly framed.

III. The Detroit Censorship Imposes Invalid Prior Restraint Upon Literary Expression.

This case has been reported in the Detroit press as a "friendly test case."[38] The sale of a copy of "The Devil Rides Outside" to Inspector Case was predicted before it took place[39] The book was placed on the Bureau's list of offensive books in February, 1954 and an effort was made to show this at the trial (17-18). The testimony was excluded upon the objection of the defendant but it is no

[38]"Detroit's Ban of Books Gets Court Review," The Detroit News, p. 8, col. 1, (Feb. 28, 1956).

[39]Tyler, "Police Book Ban Faces Court Test," Detroit Free Press, p. 6, col. 4 (June 16, 1954).

secret that this was not a prosecution which resulted from a casual sale of a volume thereafter determined to offend the statute. Censorship of pocket books is so universal in Detroit and exclusion of books at the will of the law enforcement authorities is so complete that only with the cooperation of the Bureau could a justiciable issue be framed.

The Detroit program constitutes a systematic "substitution of the prosecutor's caprice for the adjudicatory process." *Berra v. United States,* 351 U. S. 131, 140. Nothing in the published utterances of the Detroit Police Department's License and Censor Bureau or in its activities for the past decade attests to its peculiar competence in the field of literary criticism, or as arbiter of public taste or interpreter of the moral cross-currents of our society. Yet by regular notorious prior restraint large numbers of books by accredited authors are excluded from the bookshelves of one of the Nation's largest metropolitan centers. The Bureau then shrouds its operations in secrecy so that it escapes the curbs of public opinion. This is censorship at its unconstitutional worst. *Near v. Minnesota ex rel. Olson,* 283 U. S. 697; *Joseph Burstyn, Inc. v. Wilson,* 343 U. S. 495.

CONCLUSION

Accordingly, the Metropolitan Detroit Branch of the American Civil Liberties Union believes that the conviction should be set aside because the statute on which it is predicated is invalid.

Respectfully submitted,

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